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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

PENELOPE KITTREDGE SANBORN,

Defendant and Appellant.

2d Crim. No. B215158
(Super. Ct. No. 2007007789)
(Los Angeles County)

Appellant appeals from the judgment following her guilty plea to transportation of methamphetamine (count 1, Health & Saf. Code, § 11379, subd. (a)) and conspiracy to sell methamphetamine (count 3, Pen. Code § 182, subd. (a); Health & Saf. Code, § 11379.) She admitted the commission of two overt acts in furtherance of the conspiracy and that she had a prior drug-related conviction. (Health & Saf. Code, § 11370.2, subd. (c).)

At the time of sentencing in the instant matter, appellant had been ordered to serve a two-year prison sentence previously imposed by the Orange County Superior Court. The Ventura County Superior Court selected the Orange County case as the principal term and confirmed the two-year base term. As to count 1 (transportation of methamphetamine), the court imposed one-third the middle term, which it ordered to run consecutive to the Orange County sentence. As to count 3 (conspiracy), the court selected the low base term of two years to run concurrent to both the Orange County

sentence and the sentence in count 1. The court added three years for appellant's prior conviction (Health & Saf. Code, § 11370.2, subd. (c)) for an aggregate term of six years.

Appellant requested a certificate of probable cause which the trial court granted. She argues that the court erred by imposing a concurrent sentence rather than staying the sentence on the conspiracy count. We conclude that execution of sentence on count 3 must be stayed pursuant to section 654.

FACTS

The facts are taken from appellant's probation report and the transcript of her preliminary hearing. A narcotics officer with the Simi Valley Police Department placed a wiretap on the cell phone of David Hersh, who was involved in the sale and distribution of methamphetamine in Ventura County. By monitoring the calls, officers learned that one pound of methamphetamine would be sold for \$12,000. The sale was to take place on February 21, 2007, with delivery on February 22. A woman who identified herself as Penny was heard on approximately six to eight of the telephone calls. The wiretap revealed that a person by the name of Paul Aguilar was to provide the pound of methamphetamine. Officers conducted surveillance on Paul Aguilar's house, as well as the location where appellant and Hersh were to meet.

Appellant is married to Bruce Sanborn.¹ On February 22, 2007, Hersh, Aguilar, Bruce and appellant met in the Home Depot parking lot in Canoga Park. Bruce drove a truck with appellant as his passenger. Hersh and Bruce parked their vehicles and approached Aguilar's car. Bruce walked with a normal gait towards the car. As he returned to his truck, his left arm stayed next to the side of his body, as though he was carrying something under his jacket. Several minutes later, officers made a traffic stop of Bruce's truck, and recovered one pound of methamphetamine in a large plastic baggie. It was on the floorboard of the passenger's side of the truck. The arresting officer recognized appellant's voice as Penny from the telephone conversations.

¹ Due to the parties' shared surname, we refer to Bruce Sanborn by his first name for the purpose of clarity. We affirmed his conviction arising from the instant offense. (*People v. Sanborn* (Jul. 28, 2009, B209295) [nonpub. opn..])

At the preliminary hearing, Detective Thomas Meyer opined that the pound of methamphetamine was possessed for the purpose of sale, rather than personal use. This was based on the large volume of the drug, as well as a phone conversation in which Hersh indicated that appellant would be a one-pound, "either a week or a month customer."

DISCUSSION

The crime of conspiracy requires an agreement to commit a crime and an overt act in furtherance of the agreement. (Pen. Code, §§ 182, subd. (a)(1);² 184; *People v. Morante* (1999) 20 Cal.4th 403, 416.) Appellant acknowledges that the evidence established that she ordered a pound of methamphetamine, took delivery of it with her husband, and carried it away. She claims that these were overt acts in furtherance of the conspiracy, and she cannot be separately punished for both conspiracy and transportation of methamphetamine.

Section 654, subdivision (a) provides that "[a]n act or omission that is punishable in different ways by different provisions of law shall be punished under the provision that provides for the longest potential term of imprisonment, but in no case shall the act or omission be punished under more than one provision." The statute prohibits punishment for two crimes arising from a single, indivisible course of conduct. (*People v. Latimer* (1993) 5 Cal.4th 1203, 1208.)

Because of the prohibition against multiple punishment in section 654, a defendant may not be punished for both a conspiracy to commit a crime and the crime itself where the conspiracy and the substantive offense had the same objective. (*People v. Briones* (2008) 167 Cal.App.4th 524, 529; *People v. Ramirez* (1987) 189 Cal.App.3d 603, 615; *In re Cruz* (1966) 64 Cal.2d 178, 180-181.) Separate punishment is permissible only when the conspiracy extends beyond the substantive offense. (*People v. Vargas* (2001) 91 Cal.App.4th 506, 571.)

² All further statutory references are to the Penal Code.

Here, the objectives of the conspiracy and substantive offense were identical. Appellant entered a guilty plea to transportation of methamphetamine and conspiracy to sell methamphetamine. She admitted the overt acts that 1) she ordered one pound of methamphetamine from a co-conspirator; and 2) she and a co-conspirator transported one pound of methamphetamine. Both the conspiracy and the substantive offense were part of an indivisible course of conduct whose objective was to sell methamphetamine. Section 654 thus precludes the imposition of punishment on both counts 1 and 3. Rather than sentencing appellant to concurrent terms, the conspiracy count should have been stayed. (See *People v. Alford* (2010) 180 Cal.App.4th 1463.)

DISPOSITION

We modify the judgment to stay execution of sentence on count 3 (§ 182, subd. (a)(1)), pursuant to section 654. The trial court is directed to amend the abstract of judgment and forward a copy to the Department of Corrections and Rehabilitation. In all other respects, the judgment is affirmed.

NOT TO BE PUBLISHED.

COFFEE, J.

We concur:

YEGAN, Acting P.J.

PERREN, J.

Edward F. Brodie, Judge
Superior Court County of Los Angeles

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Defendant and Appellant.

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